UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

USF HOLLAND INC. Employer and CINDI FOLLMER Petitioner and TEAMSTERS LOCAL UNION NO. 120 Union	Case 18-RD-2495

DECISION AND ORDER

Petitioner seeks to decertify the Union in a unit of the Employer's office and OS&D clerical employees employed at its Coon Rapids, Minnesota facility. The Petitioner contends that the Union is not sufficiently representing the employees and that certain of its tactics are unethical. The Union contends that the petition should be dismissed because it was circulated with the Employer's knowledge and the Employer was aware of who signed it. The Employer took no position on the issues but rather intends to defer to the Board's ruling.

Based on an administrative investigation, I conclude that a reasonable period of time for bargaining had not elapsed between the Employer's voluntary recognition of the

Union on March 12, 2004[1] and the filing of the petition in this case on July 14; and that therefore the petition should be dismissed.

Under Section 3(b) of the Act, I have the authority to decide this matter on behalf of the National Labor Relations Board. Upon the entire file in this case, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. In order to understand my conclusions, I will first summarize the facts concerning the Employer's voluntary recognition of the Union and events occurring thereafter. I will then review the evidence and explain my conclusions regarding the recognition bar.

BACKGROUND

The Employer is engaged in motor freight transportation service and employs approximately 18 office and OS&D clerical employees at its Coon Rapids, Minnesota facility. On March 12, based upon a card check agreement, the Employer voluntarily

[1] Unless otherwise indicated all dates hereafter are in calendar year 2004.

[2] The Employer, USF Holland Inc., is a Michigan corporation engaged in motor freight transportation service at its Coon Rapids, Minnesota facility. During the past calendar year, a representative period, the Employer derived gross revenues in excess of $500,000 and purchased and received at its Coon Rapids, Minnesota facility goods valued in excess of $50,000 directly from suppliers located outside the State of Minnesota.

recognized the Union as the representative of the office and OS&D clerical employees at Coon Rapids. On March 23, an employee filed a decertification petition in Case 18-RD-2488. On April 1, I dismissed the petition because a reasonable amount of time for bargaining had not elapsed between recognition and the filing of the petition. The Decision and Order included a detailed analysis of the recognition bar issues presented. No request for review of the decision was filed.

The parties commenced bargaining on April 29. Negotiation sessions were subsequently held on April 30, May 27 and July 8. In addition, bargaining took place telephonically with two or three conversations taking place per week during the period April 29 through July 8. Final agreement was reached on July 8. The contract was ratified on July 18 and implemented the next day.

On July 9, the Union filed a charge in Case 18-CA-17350, alleging that the Employer had stopped paying bonus payments to unit employees in order to affect contract negotiations. The instant petition, filed on July 14, was held in abeyance pending the disposition of the unfair labor practice charge. Following a merit finding by the Region, the parties entered into a bilateral informal settlement on September 8. As part of that settlement the Employer agreed to pay more than $16,000 to 15 employees.

On September 9, the Region solicited position statements from the parties with respect to the processing of the petition. The parties were asked to provide a description of events occurring after the dismissal of the earlier petition and to submit relevant documents having a bearing on the issues. Only the Petitioner and the Union responded to the solicitation. The Employer orally advised the Region that it would not take any position on whether the petition should be processed or dismissed. Neither

the Union nor the Petitioner addressed the issue of whether a reasonable amount of time for negotiations had passed, and neither cites any legal authority in support of their respective positions.

The Petitioner submitted a statement contending that it is the belief of many employees that the Union is not sufficiently representing the employees and that the tactics of the Union are unethical. She also states that following the dismissal of the earlier petition several meetings to negotiate a contract were held, and both the Union Steward and Union Business Agent refused to communicate with the members regarding the status of negotiations. According to the Petitioner, the Business Agent indicated that the tactic of refusing to communicate was done to incite panic and anger, essentially to "rally the troops." The Petitioner contends further that on July 12, a notice of a unit meeting was posted at the Employer's facility which stated that a strike vote was scheduled for July 18; that phone calls to the Union requesting information were not returned; and that the Union made no effort to diffuse a potentially volatile situation. No unfair labor practice charges have been filed over these allegations.

The Union submitted a statement contending that the petition should be dismissed because it had been circulated with the knowledge of the Employer and that the Employer knew who had signed it. The Union has not filed any unfair labor practice charges over these allegations and did not provide any evidence to support them. The Union also cited the events that led to the ratification of the contract. It contends that the tentative agreement was thoroughly reviewed and discussed with the bargaining unit and was unanimously ratified.

ANALYSIS OF RECOGNITION BAR

It is well established that an employer's voluntary recognition of a union bars a decertification petition for a reasonable period of time in order to allow the parties to negotiate a collective bargaining agreement. See Seattle Mariners, 335 NLRB 563, 564 (2001); Rockwell International Corp., 220 NLRB 1262 (1975); and Keller Plastics Eastern, Inc., 157 NLRB 583, 587 (1966). In Ford Center for the Performing Arts, 328 NLRB 1, 2 (1999), the Board stated that a reasonable time for bargaining is not measured simply by the number of days or months spent in bargaining but by what transpired and what was accomplished in the bargaining sessions. The passage of time and number of meetings are, however, relevant factors. Lee Lumber & Building Materials Corp., 334 NLRB 399, 403 (2001), enfd 310 F.3d 209 (D.C. Cir 2002). The Board also looks to (1) the degree of progress made in negotiations, (2) whether or not the parties were at impasse, and (3) whether the parties were negotiating for an initial contract. MGM Grand Hotel, Inc., 329 NLRB 464, 466 (1999). The Board concluded in Ford Center that nine months was not a reasonable period of time for negotiations and dismissed the petition of an intervenor. In Blue Valley Machine & Mfg Co., 180 NLRB 298, 304 (1969), the Board found that eight months did not constitute a reasonable time to bargain where the parties were engaged in bargaining over an initial contract.

On the basis of the foregoing, I find that a reasonable period of time for bargaining had not elapsed before the filing of the petition in this case. In reaching this conclusion, I have relied particularly on the facts that the parties had only bargained for a period of four months; that a tentative agreement had been reached; and that the parties were bargaining for an initial contract. In Ford Center for the Performing Arts,

the Board stated that "it would frustrate the statutory goal of promoting stable bargaining relationships as well as the free choice of the unit employees . . . to allow a petition to negate the parties good-faith bargaining when the parties efforts were on the verge of reaching finality." 328 NLRB at 2. I reach the same conclusion here. To conclude otherwise would be to ignore the negotiations engaged in by the parties and the tentative agreement they reached prior to the filing of the decertification petition. N. J. McDonald & Sons, 155 NLRB 67, 71 (1965).

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it is, dismissed.[3]

Signed at Minneapolis, Minnesota, this 6th day of October 2004.

/s/ Ronald M. Sharp

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[3] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision must be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street N.W., Washington, DC 20570. The request must be received by the Board in Washington by **October 20, 2004.**